



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 10 2012

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K Street, NW #500
Washington, DC 20007

RE: MUR 6525

Dear Ms. Mitchell:

On February 1, 2012, the Federal Election Commission notified your clients, Friends of Christine O'Donnell 08 (aka "Friends of Christine O'Donnell") and Matthew J. Moran, in his official capacity as treasurer, of a complaint filed by Jonathon Moseley alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On July 31, 2012, based upon the information contained in the complaint and your response, the Commission decided to dismiss the complaint and closed its file in this matter.

The Commission encourages your clients to review the Factual and Legal Analysis which sets forth the statutory and regulatory provisions considered by the Commission in this matter, a copy of which is enclosed for their information and future reference. In particular, the Commission reminds your clients, pursuant to 2 U.S.C. § 434(b)(8) and 11 C.F.R. Part 116 (Debts Owed by Candidates and Political Committees), to continuously report their debts until the debts are appropriately extinguished.

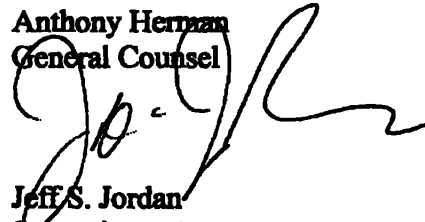
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name and title.

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure: Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Christine O'Donnell 08
(aka "Friends of Christine O'Donnell") and
Matthew J. Moran, in his official capacity as treasurer

MUR 6525

I. INTRODUCTION

This matter was generated by a complaint filed by Jonathon Moseley alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") by Friends of Christine O'Donnell 08 (aka "Friends of Christine O'Donnell") and Matthew J. Moran, in his official capacity as treasurer. It was scored as a low-rated matter under the Enforcement Priority System ("EPS"), a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In the Complaint, Jonathon Moseley alleges that he is owed \$5,058.55 by the principal campaign committee of Christine O'Donnell, Friends of Christine O'Donnell 08 and Matthew J. Moran, in his official capacity as treasurer ("O'Donnell 08" or "Committee").¹ Compl. ¶¶ 1, 7. According to Moseley, the amount owed includes \$1,802.55 for unreimbursed expenses allegedly incurred during O'Donnell's 2008 primary election campaign, and \$3,256 for work he

¹ During the relevant time period, Ms. O'Donnell had two campaign committees: Friends of Christine O'Donnell (Identification Number C00427377), which was in existence from August 8, 2006 through August 27, 2008, when it terminated, and Friends of Christine O'Donnell 08 ("O'Donnell 08") (Identification Number C00449595), which was formed on April 28, 2008, and is still in operation. Although both committees were in existence during much of Ms. O'Donnell's 2008 primary election campaign, and the respondents in this matter identified themselves as "Friends of Christine O'Donnell," it appears that the complainant's allegations relate to O'Donnell 08, as it is the committee that filed most of the reports related to the expenses at issue.

1 performed during the campaign. *Id.* at ¶ 7. Moseley contends that the Committee is attempting
2 to convert the alleged unpaid debt into an excessive, involuntary campaign contribution. *Id.* at
3 ¶ 1.

4 As support for this allegation, Moseley submitted an invoice dated June 2, 2008, and
5 addressed to “Christine O’Donnell” at “518 North Lincoln Street, Herndon, Virginia 20171.”
6 Compl., Ex. D. The first line of the invoice lists a figure of \$6,518.52 for what Moseley
7 describes as “total expenses reported on detail [sic] spreadsheet” (Ex. E), which purportedly
8 describes his campaign-related expenses through May 2008. The invoice shows three payments
9 totaling \$4,700 by the Committee to Moseley, along with a “subtotal of Expenses unpaid from
10 March Report” of approximately \$1,800. The invoice also lists the three charges, \$1,480,
11 \$1,480, and \$296, for “income lost from leaving job in LA.” These items total \$3,256, which,
12 when added to the \$1,802.55 debt claimed by Moseley, amounts to \$5,058.55, the figure set forth
13 in paragraph 7 of the Complaint.²

14 Moseley also includes what appears to be a letter from the Committee, dated June 29,
15 2010, offering to settle the dispute. Compl., Ex. A. The Committee’s letter acknowledges that
16 it owes Moseley \$1,300, but rather than paying him small installments over a long period of
17 time, it offers to pay him \$700 immediately, with a check for that amount enclosed. *Id.* The
18 letter further states that, by cashing the check, Moseley would be agreeing that the balance owed

² We note that there appear to be some discrepancies between the figures listed in the Complaint, invoice, and spreadsheet. Specifically, the invoice includes approximately \$684 for expenses that do not appear to be included in the \$5,058.55 figure claimed in the Complaint and the invoice states that \$1,818.52 remained unpaid after May 2008, following the Committee’s payment of \$4,700; whereas the Complaint alleges that Moseley is owed a slightly different amount — \$1,802.55 — for “unreimbursed expenses.” Further, the “grand total” amount of expenses listed on the spreadsheet for May 2008 (at Ex. E) is \$6,772.52, which is higher than the \$6,518.52 figure for unpaid expenses set forth on the first line of the invoice.

1 to him by the Committee was paid in full, thereby, asking him to forgive the remaining \$600.
2 *Id.* Moseley asserts, however, that the check was mailed to his aunt, who cashed it without
3 reading the accompanying letter or consulting him. Compl. ¶ 13.

4 Moseley maintains that by not paying his total claim of \$5,058.55, the Committee has
5 effectively converted the sum in dispute into an involuntary contribution to the Committee.
6 Compl. ¶ 1. Pointing out that the legal limit on contributions during 2007-2008 was \$2,300 per
7 election cycle, *see* 2 U.S.C. § 441a(a)(1),³ he concludes that the Committee would thereby have
8 accepted an excessive, unlawful contribution. *See* 2 U.S.C. § 441a(1)(A), 441a(f).

9 In the Committee's Response, it characterizes Moseley's claims as "frivolous, without
10 merit, and false." Resp. at 3. The Committee argues that, in 2010, it properly settled all debts
11 with Moseley. Referring to the Committee's June 29, 2010 letter to Moseley, the Committee
12 asserts that it tendered the \$700 check to Moseley, on the condition that cashing the check
13 evidenced his acceptance of full and complete payment for "any amount claimed to be owed by
14 Respondent to Moseley." *Id.* at 4. The Committee states that Moseley cashed the check at some
15 point on or after June 29, 2010. *Id.*

16 The Committee further contends that, after Moseley cashed the check, on September 3,
17 2010, he issued a public statement claiming that the Committee's debt had been resolved in full.
18 *Id.* at 3. The Response includes what appears to be a press release in which Moseley is quoted as
19 acknowledging that "[a]ll expenses I submitted have now been completely retired. The
20 campaign no longer owes anything on those expenses." Resp., Attach. 1. The release lists

³ The February 2007 *Record*, a Commission publication, lists inflation-adjusted contribution limits for 2007-2008, available at <http://www.fec.gov/pdf/record/2007/feb07.pdf>.

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1 Moseley as the "contact" and also states that he issued the release at his own expense and
2 without coordination with the O'Donnell campaign. *Id.*

3 Regarding the invoice that Moseley claims to have sent to "Christine O'Donnell" at "518
4 North Lincoln Street, Herndon, Virginia 20171," the Committee responds that the invoice was
5 apparently sent to the wrong address. Resp. at 4. O'Donnell, in an attached affidavit, denied
6 receiving the invoice prior to the filing of the Complaint. Resp., Aff. of Christine O'Donnell ¶ 6.
7 Further, the Committee states that neither O'Donnell nor her Committee ever resided in
8 Herndon, Virginia. Resp. at 4.

9 Finally, the Committee claims that it properly reported the expenses submitted by
10 Moseley even though it questioned the legitimacy of some of the charges. *Id.* The Committee
11 claims that it first reported owing a debt of \$4,000 to Moseley, with a memo entry to the effect
12 that the amount was "Under Review," as noted in its 2008 Pre-Primary Report, filed September
13 2, 2008. The Committee then paid him a total of \$2,700 in August and September 2008, leaving
14 a balance of \$1,300. See Resp. at 4. From October 2008 until April 2010, the Committee
15 continued to disclose this debt owed to Moseley in its reports filed with the Commission. *Id.*
16 After the Committee confirmed that the \$700 check it had sent to Moseley had been deposited,
17 the Committee states that it "reported no further amounts owed to Moseley" in its original Pre-
18 Primary Report, which covered the time period from July 1, 2010 through August 25, 2010.
19 Resp. at 5.

20 **B. Legal Analysis**

21 Based on the record evidence, we believe that Moseley's claim that the Committee
22 transformed a debt to him into an excessive contribution should instead be considered more
23 accurately as a claim that he and the Committee have a disputed debt that, perhaps, the

1 Committee failed to report. Under 11 C.F.R. § 116.1(d), “disputed debt means an actual or
2 potential debt or obligation owed by a political committee, including an obligation arising from a
3 written contract, promise or agreement to make an expenditure, where there is a bona fide
4 disagreement between the creditor and the political committee as to the existence or amount of
5 the obligation owed by the political committee.” Commission regulations require “a political
6 committee [to] report a disputed debt in accordance with” 11 C.F.R. §§ 104.3(d), 104.11 “if the
7 creditor has provided something of value to the political committee” and “until the dispute is
8 resolved, the political committee shall disclose on the appropriate reports any amounts paid to
9 the creditor, any amount the political committee admits it owes, and the amount the creditor
10 claims is owed.” 11 C.F.R. § 116.10(a). Here, although the specific dollar amounts of the debt
11 in question is in dispute, it appears that the Committee properly disclosed to the Commission
12 what it believed to be the debt it owed to Moseley. The Committee submitted to the
13 Commission, for example, a memo entry when the validity of one of the debts was not clear.
14 Further, the invoice allegedly sent by Moseley was mailed to the wrong address and to the wrong
15 party, as the Committee, not O’Donnell, handled reporting issues and debt repayment.

16 The record, however, indicates that the Committee appears to have settled its
17 acknowledged \$1,300 debt to Moseley for \$700, less than the actual amount that Moseley has
18 contended he was owed. If the \$700 payment to Moseley represented less than the actual value
19 of the debt owed, such payment would violate Commission regulations. See 11 C.F.R. § 116.7
20 (debt settlement plans filed by terminating committees and Commission review). Under
21 Commission regulations, only a terminating committee may settle a debt for less than the full
22 amount owed to the creditor. See 11 C.F.R. § 116.2(a). Ongoing committees — such as the
23 O’Donnell Committee — may not settle outstanding debts for less than their full value and may

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1 obtain debt relief only under limited circumstances, not present here, such as situations where
2 they obtain a Commission determination that the creditors cannot be found or are out of business.
3 See 11 C.F.R. §§ 116.2(b), 116.9(a). Thus, the O'Donnell Committee should have reported the
4 \$600 debt owed to Moseley until it was appropriately extinguished. See 2 U.S.C. § 434(b)(8).

5 Nonetheless, in light of the fact that it appears that the Committee previously reported the
6 full \$1,300 in debt owed to Moseley and the relatively small amount of remaining debt, the
7 Commission determined that further enforcement action was not warranted, exercised its
8 prosecutorial discretion and dismissed this matter. See *Heckler v. Chaney*, 470 U.S. 821 (1985).
9 The Commission also approved a letter reminding Friends of Christine O'Donnell 08 (aka
10 "Friends of Christine O'Donnell") and Matthew J. Moran, in his official capacity as treasurer, of
11 the debt reporting requirements under 2 U.S.C. § 434(b)(8) and 11 C.F.R. Part 116 (Debts Owed
12 by Candidates and Political Committees), and closed the file.